

REMARKS

This responds to the Final Office Action dated March 25, 2011.

Claims 27, 35, 38, and 45 are amended, claims 1-26, 30, 36-37, 41, 46-48 are canceled, and claims 71 and 72 are added; as a result, claims 27-29, 31-35, 38-40, 42-45, and 49-72 are now pending in this application.

The Rejection of Claims Under § 103

Claims 27-29, 31-34, 49-65, 69 and 70 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,119,152 (Carlin et al), "Domain Names - Concepts and Facilities" (RFC 1034), and Fisher et al (US Patent 5,835,896), hereinafter Fisher.

Applicants respectfully submit that the rejection of claims 1-2, 4, 8-13, 15 and 19-23 is defective for the reason that the Final Office Action fails to make a *prima facie* showing of obviousness as is required under 35 U.S.C. § 103.

Applicable Law

In rejecting claims under 35 U.S.C. § 103, the Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. *See* M.P.E.P. § 2142. Further, "[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness"¹

Argument

Applicants believe that the issue of patentability over Carlin in combination with RFC 1034 and Fisher is best understood with regard to the limitations of now amended claim 38.

Claim 38, as amended, now includes the following limitations:

presenting, by a sales server, a first networked sales interface accessed through a first member site by a first user, the first networked sales interface being generated by the

¹ *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006), cited with approval in *KSR v Teleflex*, 127 S. Ct. 1727, 1740-41 (2007), 82 USPQ2d at 1396 (quoting Federal Circuit statement with approval).

sales server based on the first plurality of customization commands received from the first accountholder;

presenting, by the sales server, a second networked sales interface accessed through a second member site by a second user, the second networked sales interface being generated by the sales server based on the second plurality of customization commands received from the second accountholder...

receiving a first bid for a first listing of an item for sale in an auction that is presented to the first user via the first networked sales interface; and

receiving a second bid for the first listing of the item for sale in the auction that is further presented to the second user via the second networked sales interface.

Carlin, RFC 1034, and Fisher, whether alone or in combination, fail to teach or suggest operating, by different legal entities, the first or second servers, in accordance with the above limitations.

Carlin

Carlin generally relates to a multi-provider on-line service for remotely-located service providers.² “The multi-provider on-line system may be uniquely configured by a plurality of service providers, such that each service provider can offer its own subset of features to its subscribers and customize the appearance of the user interface.” Carlin elaborates as follows:

² Carlin, col. 3, lines 10-16.

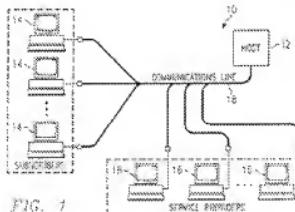


FIG. 1

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FIG. 1 illustrates a schematic representation of an on-line service using the multi-provider on-line system of the present invention. The multi-provider on-line system, generally referred to by reference numeral 10, is controlled by host computer 12, which is connected to a plurality of terminals. For purposes of illustration, the terminals are 20 denoted in FIG. 1 as subscriber terminals 14 and service provider terminals 16. The terminals 14 and 16 communicate with the host 12 through communications line 18.⁴

The above material from Carlin relates to a multi-provider on-line system. The multi-provider on-line system is controlled by a host computer. The host computer is connected to subscriber terminals and service provider terminals. "A company or individual who wishes to provide a private-on-line system can customize the multi-provider on-line system to offer the desired features."⁵

Carlin further relates the host computer may provide multiple features.

TABLE I

Features for User Selection

Service
401(k) Savings
Bank Accounts
Books
Business Directories
Business Information
Car
Classified Ads
College
Movie Tickets
Music & Books
Newspapers & Magazines
Stocks
Automobiles
Business
Entertainment
Finance
Health
Home
Local
News
Politics
Real Estate
Recreational
Religious
Science
Sports
Business
Entertainment
Finance
Health
Home
Local
News
Politics
Real Estate
Recreational
Religious
Science
Sports

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In operation, the host computer 12 is operable to provide a plurality of features to the subscriber terminals 14 via the 25 communications line 18. The features which may be provided by the host 12 may vary; typical features which would be provided by the host 12 would include electronic mail, forums, newsletters, roundtables, on-line purchasing, and searchable databases. These features are well known in the 30 art. A more detailed list of features is provided in Table I, hereinbelow. This list is not meant to be comprehensive of the features which may be offered by a particular service in accordance with the invention, but is provided as an example of what may be offered by the host computer 12.⁷

³ Carlin, Figure 1.⁴ *Id.*, col. 3, lines 14-24.⁵ *Id.*, col. 2, lines 22-24.⁶ *Id.*, Table I, excerpt.⁷ *Id.*, col. 3, lines 24-35.

The above material from Carlin relates to features provided by the host computer. The host computer may provide features including electronic mail, forums, newsletters, roundtables, on-line purchasing, and searchable databases none of which include an auction.

Carlin further relates the advantage of the multi-provider on-line system over present day systems.

TABLE I
Excerpt From Carlin

Category	Feature
General	Star Available
	Electronic Commerce
	Knowledge Database
	All Available Features
	Text Search
	Text Selection
	Multi-media Resources
	Multi-media, Multimedia, Multimedia
Picture	Access File
	Bill Recovery
	Money Bill
	Money Flight
Characteristics	Checklist
	Credit Rating
	Customer
	Customer Info
	Emp. Search
	Forum
	Provider
	Ref.
	Product
	Business
	Information
	Order Processing

In contrast to present-day systems, the multi-provider on-line system allows a plurality of service providers, who would normally require their own on-line equipment and staff to offer a private on-line service, to define a set of features to offer to subscribers. Hence, each service provider can generate a private on-line service to be offered to subscribers using the features offered by the host 12 and, where appropriate, upload data for access solely to its own 45 subscribers. The service provider may then offer the private on-line service to a group of subscribers of its choosing. This group of subscribers can access the features chosen by the service provider and will not have access to other features offered by the host computer 12 which are not chosen by the service provider or to information provided by other service providers.⁸

The above material from Carlin relates advantages of the multi-provider on-line system. Specifically, the multi-provider on-line system allows a service provider to configure a host to define a set of features to offer a group of subscribers. This group can access the features chosen by the service provider and will not have access to other features offered by the host computer which are not chosen by the service provider or to information provided by other service providers.

⁸ Id., Table I, excerpt.

⁹ Id., col. 3, lines 24-51.

Claim 38 recites, *“receiving a first bid for a first listing of an item for sale in an auction that is presented to the first user via the first networked sales interface; and receiving a second bid for the first listing of the item for sale in the auction that is further presented to the second user via the second networked sales interface”* the *“first networked sales interface being generated by the sales server based on the first plurality of customization commands received from the first accountholder”* and the *“the second networked sales interface being generated by the sales server based on the second plurality of customization commands received from the second accountholder...”* In contrast with claim 38, Carlin relates a multi-provider on-line system where a service provider can customize the multi-provider on-line system to offer features and information available solely to its own subscribers. Carlin clearly differs from the quoted limitations of claim 38 for at least two reasons. First, Carlin relates a number of customizable features but none of the mentioned features include an auction. Carlin is simply silent with respect to auctions. In contrast, claim 38 recites, *“receiving a first bid for a first listing of an item for sale in an auction that is presented to the first user via the first networked sales interface; and receiving a second bid for the first listing of the item for sale in the auction that is further presented to the second user via the second networked sales interface.”* Carlin cannot possibly teach or suggest these limitations because Carlin fails to mention an auction much less receiving bids much less receiving bids in accordance with the other limitations of claim 38 that are directed toward the configuration of the networked sales interfaces that are utilized to present the listing for which bids are received. Second, Carlin relates a multi-provider on-line system that enables a service provider to offer features and information that are available *solely* to its own subscribers. In contrast, claim 38 recites, *“first networked sales interface being generated by the sales server based on the first plurality of customization commands received from the first accountholder”* and the *“the second networked sales interface being generated by the sales server based on the second plurality of customization commands received from the second accountholder...”* and receiving bids via the first or second “networked sales interfaces” for an auction. That is, Carlin specifically prohibits a provider from offering a feature to subscribers of other providers much less *“receiving a first bid for a first listing of an item for sale in an auction that is presented to the first user via the first networked sales interface; and receiving a second bid for the first listing of the item for sale in the auction that is further*

presented to the second user via the second networked sales interface" where the first and second "*networked sales interfaces*" are generated based on customization commands from different account holders. Indeed, Carlin is adamant on this point. Carlin states:

The service provider may then offer the private on-line service to a group of subscribers of its choosing. This group of subscribers can access the features chosen by the service provider and will not have access to other features offered by the host computer 12 which are not chosen by the service provider or to information provided by other service providers.

For example, a first service provider may be offering support for a software package. The software provider could set up a private on-line service which provided for electronic mail, forums in which the subscribers could communicate with the service provider's technical staff and with each other to discuss the application, newsletters to update the subscriber's items of interest relating to the application, a file library from which subscribers can download files relating to the application and an on-line shopping area in which subscribers could order products through the service provider. A second service provider may offer a service to antique car enthusiasts. This service may also provide electronic mail, forums, newsletters, on-line shopping, as described in connection with the first service provider, and further provide a searchable database of articles on antique cars whereby the subscribers to the second service can search the articles for research purposes. While both the software support service and the antique car club service are provided from the host computer 12, the two services do not interact. Subscribers to the first service cannot access the electronic mail, forum messages, newsletters, on-line shopping areas, or searchable database of the second service. Likewise, subscribers to the second service cannot access the electronic mail, forum messages, newsletters, file library or on-line shopping areas of the first service. In other words, while both services offer some of the same features (electronic mail, forums, newsletters, and on-line shopping), the data related to these services is kept separate so that subscribers of one service cannot access data from another service. Consequently, each subscriber sees the on-line service to which he or she subscribes as an independent service provided by the service provider.¹⁰

The above quote from Carlin states, "...the two services do not interact." Accordingly, Carlin explicitly teaches a system that isolates the features of one service provider from the subscribers of another.

¹⁰ Id., col. 4, line 35 – col. 5, line 15 (emphasis added).

Elsewhere Carlin relates databases that are private to a first service provider and can be made accessible to a second service provider for inclusion in the second service provider's subset of features.¹¹ Nevertheless access by the second service provider to the first provider's database cannot be said to teach or suggest the above quoted limitations of claim 38 for the reason that Carlin further states that the first provider's database may only be utilized by a feature that is offered by the first service provider or the second service provider.¹² That is Carlin cannot be said to teach or suggest, "*an auction that is presented to the first user via the first networked sales interface*" and "*to the second user via the second networked sales*" because Carlin's system isolates utilization of the features of one service provider from the subscribers of another.

Carlin therefore cannot be said to teach or suggest the above quoted limitation because Carlin fails to relate any information regarding an auction and a multi-provider on-line system where a service provider can customize the multi-provider on-line system to offer features solely to its own subscribers. In contrast, claim 38 recites, "*receiving a first bid for a first listing of an item for sale in an auction that is presented to the first user via the first networked sales interface; and receiving a second bid for the first listing of the item for sale in the auction that is further presented to the second user via the second networked sales interface*" the "*first networked sales interface being generated by the sales server based on the first plurality of customization commands received from the first accountholder*" and the "*the second networked sales interface being generated by the sales server based on the second plurality of customization commands received from the second accountholder...*" These are distinguishable actions.

The above remarks are also applicable to independent claims 35 and 38.

In addition, if an independent claim is nonobvious under 35 U.S.C. § 103 then, any claim depending therefrom is nonobvious and rejection of claims 28-29, 31-34, 49-65, 69 and 70 under 35 U.S.C. § 103 is also addressed by the above remarks.

RFC 1043

¹¹ Id., col. 2, lines 39-45.

¹² Id.

RFC 1043 is a request for comment published by the Network Working Group, a team lead by Steve Crocker, implementing the host-to-host connectivity and switching layers of the protocol stack of the ARPANET,¹³ a network that later evolved into the Internet. A Request for Comments (RFC) is a memorandum describing methods, behaviors, research, or innovations applicable to the working of the Internet and Internet-connected systems. The RFC 1043 is titled “Domain Names – Concepts and Facilities”¹⁴ and introduces the Domain Name System (DNS).¹⁵ RFC 1043 also fails to teach or suggest the above quoted elements. Accordingly, RFC 1043 cannot provide what Carlin lacks because RFC 1043 also fails to teach or suggest the elements recited by the independent claims of the present application.

Fisher

Fisher relates a system and method for conducting a multi-person interactive auction in a variety of formats. The system allows a group of bidders to interactively place bids over a computer or communications network that are subsequently recorded by the system. When appropriate, the system closes the auction from further bidding and notifies the winning bidders and losers as to the auction outcome. Notwithstanding relating an auction Fisher also fails to teach or suggest the above quoted elements. Accordingly, Fisher cannot provide what Carlin and RFC 1043 lack because Fisher also fails to teach or suggest the elements recited by the independent claims of the present application.

Claims 35, 38-40, and 42-46

Claims 35, 38-40, and 42-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carlin, “Domain Names - Concepts and Facilities” (RFC 1034), Lowery et al (US Patent 5,894,554), hereinafter Lowery, and Fisher.

Lowery relates a web server that intercepts a request and routes the request to one of multiple page servers. Lowery also fails to teach or suggest the above quoted limitations from claim 27. Accordingly, Lowery cannot supply what is lacking in Carlin, RFC 1043, or Fisher.

¹³ Internet, http://en.wikipedia.org/wiki/International_network (2010).

¹⁴ Id.

¹⁵ RFC 1043.

Independent claims 35 and 38 include limitations substantially similar to independent claim 27. Accordingly, the above remarks are also applicable to independent claims 35 and 38.

In addition, if an independent claim is nonobvious under 35 U.S.C. § 103 then, any claim depending therefrom is nonobvious and rejection of dependent claims 39-40, and 42-46 under 35 U.S.C. § 103 is also addressed by the above remarks.

Claims 66-68

Claims 66-68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carlin, RFC 1034, Fisher, and Sadiq et al (US Patent 6,032,153), hereinafter Sadiq.

Sadiq relates a method and system for maintaining persistence in shared object system. Sadiq fails to teach or suggest the above quoted limitations from claim 27. Accordingly, Sadiq cannot supply what is lacking in Lowery, Carlin, RFC 1043, or Fisher.

Claims 66-68 depend on independent claim 27. Accordingly, the above remarks are also applicable to claims 66-68.

CONCLUSION

Applicants respectfully submit that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's representative at (408) 278-4046 to facilitate prosecution of this application.

If necessary, please charge any additional fees or deficiencies, or credit any overpayments to Deposit Account No. 19-0743.

Respectfully submitted,

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